

Waikiki Sunset Hotel, Incorporated and Guillerma Cabacungan, Gregoria A. Bayan, Perpetua Sales and Culinary and Service Employees Union, Local 555, AFL-CIO. Cases 37-CA-2005-2, 37-CA-2005-3, 37-CA-2005-4, 37-CA-2044-2, and 37-CA-2044-3

20 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 23 January 1984 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Parties filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions.²

ORDER

The National Labor Relations Board orders that the Respondent, Waikiki Sunset Hotel, Incorporated, Honolulu, Hawaii, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Culinary and Service Employees Union, Local 555, AFL-CIO, or any other union.

(b) Coercively interrogating any employee about union support or union activities.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that Carmelita Pagampao was either a supervisor or agent of the Respondent. We find that she was the Respondent's agent, rather than a supervisor. *Limestone Apparel Corp.*, 255 NLRB 722, 733 (1981), enfd. 705 F.2d 362 (6th Cir. 1982); *Quality Drywall Co.*, 254 NLRB 617, 620 (1981). Pagampao's title at the time of the alleged violations was linen room attendant, but the judge found that the other maids perceived her to be their supervisor and believed that she spoke on management's behalf. The judge found that Pagampao inspected the maids' work, reprimanded them, and threatened them with discharge when they did not perform properly. The judge also found that Pagampao fired another maid pursuant to her supervisor's direction. We find that Pagampao was acting as the Respondent's agent when she interrogated the other maids about their union activity.

(c) Threatening any employee with discharge because of union support or union activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Guillerma Cabacungan and Gregoria Bayan immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Honolulu, Hawaii facility copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² We shall issue an order in lieu of the judge's recommended Order to include the usual injunctive language prohibiting the Respondent from engaging in any "like or related" unlawful activity, and to correct other inadvertent errors. We shall also issue a new notice to employees.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Culinary and Service Employees Union, Local 555, AFL-CIO, or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten you with discharge because of your union support or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Guillerma Cabacungan and Gregoria Bayan immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

WAIKIKI SUNSET HOTEL, INCORPORATED

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Honolulu, Hawaii, on November 9 and 10, 1983. The charge in Case 37-CA-2005-2 was filed on February 7, 1983, by Guillerma Cabacungan, an individual. The charge in Case 37-CA-2005-3 was filed on February 7, 1983, by Gregoria A. Bayan, an individual. The charge in Case 37-CA-2005-4 was filed on February 25, 1983, by Perpetua Sales, an individual. The charges in Cases 37-CA-2044-2 and 37-CA-2044-3 were filed on June 27, 1983, by the Culinary and Service Employees Union, Local 555, AFL-CIO (the Union).

Thereafter, on August 25, 1983, the Regional Director for Region 20 of the National Labor Relations Board (the Board) issued an order consolidating cases and consolidated complaint and notice of hearing alleging a vio-

lation by Waikiki Sunset Hotel, Incorporated (Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act.

The parties were afforded a full opportunity to be heard; to call, examine, and cross-examine witnesses; and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and counsel for Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Hawaii corporation with an office and place of business located in Honolulu, Hawaii, and is engaged in the operation of a hotel providing food and lodging for guests. In the course and conduct of its business operations, Respondent annually derives gross revenues in excess of \$500,000, and sells and performs services valued in excess of \$50,000 for firms located outside the State of Hawaii.

It is admitted and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are whether Respondent interrogated employees regarding their union activity and threatened them with discharge in violation of Section 8(a)(1) of the Act, and thereafter discharged employees in violation of Section 8(a)(3) of the Act because they had signed union authorization cards.

B. *The Facts*

Guillerma Cabacungan began working for Respondent in June 1981 as a room maid in the housekeeping department. Her last day of employment was on January 31, 1983. She signed a union authorization card in late September 1982 and solicited other workers to sign cards.

During the week of December 26, 1982, Carmelita Pagampao¹ asked Cabacungan whether she had signed a petition for the Union. Cabacungan was fearful of telling Pagampao the truth, and replied that she had not, believing that "if I tell her that I signed the union cards, she will fire me out." Thereafter, during the last week of December 1982, in Cabacungan's presence, Pagampao continued to interrogate all the maids about whether they

¹ The status of Pagampao as a supervisor or agent of Respondent is discussed *infra*.

signed cards for the Union. The maids replied that they had not.

During the week of January 16, 1983, Cabacungan had a conversation with Flora Ledward, head of the housekeeping department. Ledward asked if she had signed the union petition. Again she said that she had not. On January 26, 1983, Ledward called a meeting of all the maids who were at work that day. She said that she was aware of the identity of all the employees who had signed the petition, and that all of the "old-timers," meaning the employees with the most seniority, were among them. She went on to say that she would fire those who signed the petition regardless of how good their work performance was, and that those who would be dismissed would first be put on vacation and would not be permitted to return to work.

On January 29, 1983, Cabacungan observed that, according to the posted work assignment sheet, she had been scheduled to begin her vacation after January 31. Later that day she was summoned to see Ledward who told her that she had been put on vacation and would not be permitted to return to work because she had signed the union petition. Her vacation was scheduled from February 3 to February 14. She was asked to sign a request for vacation leave. She did so, believing that her refusal to sign it would preclude her from any vacation money.

On Cabacungan's last day of work, January 31, Pagampao told her that she was being fired because she had signed the union card, and added that if Cabacungan had been truthful by admitting to her earlier that she had signed the card "you would have saved your job." Gregoria Bayan and Eufresinia Dique were also present during this conversation.

Gregoria Bayan worked for Respondent as a room maid in the housekeeping department since June 1981. Her last day of employment was January 31, 1983. She signed a union card on September 26, 1982, and solicited signatures from other employees. She testified similarly to Cabacungan regarding what Ledward said at the meeting of all the maids on January 26, 1983. On January 29, 1983, Bayan noticed that she had been scheduled to begin her vacation. She testified that on that day Ledward said, "Gregoria, I put you on vacation, and after that, you cannot come back to work. I fired you because you signed the union petition." Ledward also told her that she understood that Bayan was going to return to work at the Halekulani Hotel,² and that she heard the hotel would reopen in March 1983. Bayan replied that she had never advised Ledward that she intended to return to work for the Halekulani. She testified, however, that returning to work for the Halekulani when it reopened had always been a distinct possibility.

Bayan began working for another employer, the Quality Inn, on February 27, 1983. She was interviewed for work at the Halekulani on August 1, 1983, and returned to work at that hotel on August 19, 1983, at which time

the renovation was being completed. The hotel opened on September 1, 1983.

Perpetua Sales has worked for Respondent since November 1980, and is still in Respondent's employ. She signed a union card in September 1982. She attended the January 26 meeting, and quoted Ledward as saying, "I know all the maids, the seniority signed union cards . . . I give them their vacation and they cannot come back to work anymore." Ledward also mentioned, according to Sales, that the employees were trying to bring back the former housekeeper, Ledward's predecessor, to replace Ledward.

Apparently on January 26, 1983, Sales spoke to Ledward about her vacation which was not scheduled to begin until April 17, 1983. Ledward said Sales could not return to work after the vacation. Sales phoned Pagampao that evening to inquire about this. Pagampao asked her to tell the truth about who signed union cards. Sales' testimony is confusing, apparently as a result of her limited facility with comprehending and communicating in English. However, in response to Pagampao's question, she either specifically named Cabacungan, Bayan, and herself, or admitted that the "senior" employees had signed cards for the Union. Pagampao said that Ledward fired her because she signed a card.

In early April 1983, Sales had a conversation with Bruce Nishimoto, Respondent's manager. Nishimoto told her that she was mistaken about being terminated after her vacation, and that she would not be fired. She was given a letter to this effect.

Flora Ledward has been executive housekeeper for Respondent since February 1980. Ledward testified that she had no conversation with Cabacungan, Bayan, or Sales about a union petition or union cards, and knew nothing about a union campaign. On the morning of January 26, Bayan approached her and said she intended to return to the Halekulani Hotel at some unspecified time in February because she did not want to lose her 10 years' seniority. As a result of this statement by Bayan, Ledward immediately assembled all the employees, and told them that the employees who wanted to go to the Halekulani or any other hotel should first take their vacations, and let her know if they were leaving so that she would replace them. Nothing was mentioned about the union petition or union cards. Ledward testified that it takes time to train a maid, and she wanted to have sufficient lead time to hire and train replacements. Two employees, Elena Bannan and Melena Hamasaki, corroborated Ledward's account of the January 26 meeting.

On January 29, Ledward had a conversation with Bayan and Cabacungan. She asked Bayan when in February she was leaving. According to Ledward, Bayan replied that she had called the Halekulani and was advised that the hotel would not be opening until June. Ledward asked Cabacungan if she also intended to leave Respondent's employ and go to work for the Halekulani, and she said yes. Apparently both employees said they wanted to continue working for Respondent until June. Ledward said she could not let them work until June because she needed to immediately train replacements, explaining that cleaning the rooms at Respondent's hotel was par-

² Bayan had worked as a maid at the Halekulani Hotel for approximately 10 years prior to working for Respondent, and had been laid off or terminated from the hotel when it was closed for renovation.

ticularly difficult compared to other hotels. According to Ledward, both Bayan and Cabacungan agreed. Bayan asked if she and Cabacungan could work until January 31, and thereafter take their vacations, as this would give Bayan an opportunity to rest before she went to the Halekulani.

Ledward testified that applicants for employment as room maids were plentiful, and that there was no difficulty in hiring immediate replacements for Bayan and Cabacungan. These replacements, however, were not hired until sometime in February.

Ledward also denied that, on January 26, she told Sales she would be terminated sometime in May. Rather, Sales asked about her vacation and wanted it to be scheduled for May. Ledward apparently agreed. There was nothing said about a union or a union petition.

Pagampao testified that she had no knowledge of the Union, and no discussion with Cabacungan or other maids about the Union or union petition. She also denied that she received a phone call from Sales on January 26 or at any other time.

Bayan, Cabacungan, and Sales testified that at times material herein Pagampao was the assistant housekeeper and acted as Ledward's assistant. Cabacungan testified that she has seen Pagampao make out the work schedules even on occasions when Ledward was present. Bayan testified that Pagampao would help Ledward check the rooms after they had been cleaned by the maids to see if they were ready to be occupied. Pagampao would report to Ledward if the rooms had not been properly cleaned, and Ledward would "scold" the maids. Further, Pagampao would direct the maids to re-clean the rooms if they did not want Ledward to yell at them, and would tell maids that they would be fired if they did not clean their rooms properly. Bayan testified that she observed Pagampao discharge another maid, apparently pursuant to Ledward's instructions.

Respondent's records shows that Pagampao was promoted to a working supervisor on February 1, 1983. Ledward testified that prior to February 1, Pagampao was the linen room attendant. She stocked the linen room, issued the supplies to the maids, answered the telephone, and was responsible for the lost and found items. Ledward testified that prior to February 1 she was the only supervisor in the housekeeping department, and directed the work of some 25 housekeeping employees in the 38-story hotel which contains 425 rooms. Everyone, including Ledward and Pagampao, would help out with cleaning the rooms. Pagampao, according to Ledward, was given no authority to discipline or otherwise supervise the maids or to recommend such action. Regarding certain matters, such as a maid having to leave work early, Pagampao would ask Ledward's permission on behalf of the maid. Contrary to Bayan's testimony, Ledward stated that Pagampao was not asked to terminate any employee, and did not do so. Rather, the employee in question was terminated by Ledward. On rare occasions when Ledward was away from the premises, Pagampao had been instructed to call the hotel manager if there were any problems that could not wait for Ledward's return, although Pagampao did have permission to let the maids go home if they were sick. Pagampao

continues to be hourly paid as a working supervisor, and does not attend management meetings.

C. Analysis and Conclusions

Employees Cabacungan, Bayan, and Sales, all of whom had varying degrees of difficulty with comprehending and responding to the sometime convoluted questions put to them, nevertheless impressed me as credible witnesses, and their testimony was consistent in material respects. Moreover, it is significant that Sales continued in Respondent's employ, and Respondent adduced no evidence tending to show that Sales would have any reason to fabricate her testimony regarding the events herein. See *Pittsburgh Press Co.*, 252 NLRB 500, 504 (1980), and cases cited therein.

Conversely, Supervisor Ledward did not impress me as a forthright witness, and her testimony, particularly regarding her rationale for discharging the employees, was simply not compatible with either logic or sound business practices. It is inconceivable that she would find it necessary to immediately call a meeting of her entire staff because one employee, Bayan, allegedly told Ledward that she would be leaving Respondent's employ to return to her former employer. At that particular time, so far as the record shows, Ledward had not been advised that other employees were also intending to leave Respondent's employ, and no comprehensible rationale appears to exist justifying Ledward's alleged request to the entire staff that they announce any intentions of this nature. If in fact the Halekulani Hotel was seeking employees at that time, it certainly would not have been in the best interest of either Ledward or Respondent to, in effect, act as a referral service for a competitor. Moreover, it is significant that the human resources manager for the Halekulani Hotel, Carol Suda, testified that it was not until the end of May 1983 that the hotel first contacted its former employees in order to ascertain whether they would be interested in returning to work. The record is devoid of any evidence that in late January 1983 either Bayan or Cabacungan believed the Halekulani Hotel would be opening in February, and then June 1983, as Ledward maintains. Thus, the record supports the denials of Bayan and Cabacungan that they ever made such or similar statements to Ledward in January 1983.

Ledward emphasized that she was very friendly with Cabacungan and Bayan, and there is no contention that their work while in the employ of Respondent was deficient in any respect. Therefore, it defies credulity to accept as truthful Ledward's reason for refusing to honor the alleged request of both Cabacungan and Bayan to remain in Respondent's employ until June. Thus, on January 29, 1983, both employees were working, and their replacements had not been hired. Respondent adduced no probative evidence showing that it was necessary to hire replacements in early February, so that they could be properly trained as room maids by June, and Ledward's self-serving statements that the rooms at Respondent's hotel are somehow more difficult to clean, apparently as a result of their size and the fact that some of all suites are equipped with kitchens, simply does not jus-

tify a 4- or 5-month training period for work of this nature.

I find that Ledward questioned Cabacungan about signing the union petition, announced at the meeting on January 26 that all employees who signed the union petition would be discharged,³ and on January 29 told Cabacungan and Bayan that they were discharged because of their union activity. Moreover, it is clear, and I find, that Ledward told Sales, on January 26, that she was being discharged and her discharge would be effective following her vacation which was scheduled for April. While Sales may not have been specifically told that the discharge was for union activity, this was certainly understood as a result of the January 26 meeting. Sales' notification of discharge was not rescinded until early April, and therefore the record is clear that for a period of several months Sales believed she had been terminated and would no longer be in Respondent's employ beyond April 1983. It is clear that, by the foregoing conduct, Respondent violated Section 8(a)(1) and (3) of the Act as alleged.⁴

I further find that Carmelita Pagampao, at times material herein, was either a supervisor or agent of Respondent, as alleged. I credit Cabacungan and Bayan and find that Pagampao was perceived by the employees to be their supervisor and that it was reasonable for them to believe she spoke on behalf of management. Thus, I find that Pagampao would inspect the work of the maids and reprimand them and threaten them with discipline or discharge for failure to properly perform their duties. Moreover, I find that Pagampao did discharge another maid, apparently pursuant to Ledward's direction. I do not credit the testimony of either Ledward or Pagampao, both of whom denied the authority and conduct attributed to Pagampao by Cabacungan and Bayan. See *Limestone Apparel Corp.*, 255 NLRB 722, 733 (1981); *Quality Drywall Co.*, 254 NLRB 617, 620 (1981); *Cumberland Farms Dairy*, 258 NLRB 900 fn. 3 (1981).

Having found that Pagampao was a supervisor or agent of Respondent, I further find that she interrogated Cabacungan and other maids, as credibly testified to by Cabacungan, regarding their union activity. Such conduct is clearly violative of Section 8(a)(1) of the Act, as alleged. *Ajax Tool Works*, 257 NLRB 825, 828 (1981). Moreover, the fact that Cabacungan and other unspecified maids were reluctant to be truthful with Pagampao,

for fear of being discharged by her, demonstrates that they believed Pagampao to possess such authority, and enforces my conclusion, supra, that Pagampao was either a supervisor or agent of Respondent. While I further conclude that Pagampao also interrogated Sales during the January 26 phone call which, I find, did occur as Sales testified, and told Sales that she had been fired because she signed a union card, such statements do not appear to be alleged as violations.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated Section 8(a)(1) and (3) of the Act by discharging employees Guillerma Cabacungan, Gregoria Bayan, and Perpetua Sales in January 1983.
4. Respondent has violated Section 8(a)(1) of the Act by engaging in coercive interrogation of employees, and by threatening them with discharge because of their union activity.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated and is violating Section 8(a)(1) and (3) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed under Section 7 of the Act, and take certain affirmative action described herein, including the posting of an appropriate notice.

Having found that Respondent unlawfully discharged and thereafter failed and refused to reinstate employees Cabacungan and Bayan, it is recommended that Respondent offer them immediate reinstatement to their former positions without loss of seniority or other benefits and make them whole, with interest, for any loss of pay they may have suffered as a result of the discrimination against them. Backpay is to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

It is further recommended that Respondent expunge from its records any reference to the foregoing unlawful discharges and advise the employees that it has done so. See *Sterling Sugars*, 261 NLRB 472 (1982).

[Recommended Order omitted from publication.]

³ I do not credit the testimony of Elena Bannan or Melena Hamasaki who testified that Ledward made no such statement at this meeting.

⁴ Respondent's contention that the determination by the State Department of Labor and Industrial Relations Unemployment Insurance Division that Bayan simply quit her job should be afforded significant weight is without merit. The record clearly shows that this determination was based solely on the Respondent's proffered account of the matter, and that Bayan, who failed to report for her appointment with the agency, did not furnish her position regarding her discharge.